

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2016 JUL -6 PM 4:04

U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DR. MARY LOUISE §
SERAFINE, §

Plaintiff, §

v. §

Cause No.1:11-cv-01018-LY

TIM F. BRANAMAN, §
Chairman, Texas State Board §
of Examiners of Psychologists, §
in his official capacity; and §
DARREL D. SPINKS, §
Executive Director, Texas §
State Board of Examiners of §
Psychologists, in his official §
capacity, §
Defendants. §

Motion for Entry of Judgment

TO THE HONORABLE LEE YEAKEL:

For reasons of judicial economy, and there being no
cause for delay, plaintiff Mary Louise Serafine brings before the
Court this request for entry of judgment, while the collateral issue

of attorneys' fees is also before the Court. There is no reason the fees and judgment should not be decided together. The fees issue was recently referred to, but has not yet been set for hearing by, United States Magistrate Judge Andrew Austin.

Facts & Argument

Plaintiff requests the declaratory and injunctive relief prayed for in her original complaint, filed on November 29, 2011, that certain sections of the Texas Psychologists' Licensing Act and its associated regulations, be declared unconstitutional, both facially and as applied to Serafine, and that defendants and their employees and agents be enjoined from enforcing the same. Dkt. No. 1, pp. 24-26.

On January 12, 2016, the Court of Appeals issued its opinion and judgment, thereafter denying to defendants re-hearing and re-hearing *en banc*. On May 2, 2016 the deadline to request an extension of time to file a petition for certiorari before the U.S. Supreme Court passed, with neither party requesting an

extension. On May 12, 2016, the deadline for filing a petition passed, and neither party filed; thus the Court of Appeals' opinion and judgment are final.

On June 6, 2016, the Court referred to U.S. Magistrate Judge Andrew Austin Plaintiff's First Amended Motion for Section 1988 Attorney's Fees, Costs and Expenses, filed April 11, 2016 (Dkt. No. 120), and its related filings.

No issues on the merits remain to be decided.

Conclusion & Prayer

For the foregoing reasons, plaintiff respectfully requests that the Court enter the attached proposed final judgment, as soon as practicable.

Respectfully submitted,

M. L. Serafine M. L. Serafine

Mary Louise Serafine, Ph.D., J.D.

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Austin, Texas 78765

512-220-5452, mlserafine@gmail.com

CERTIFICATE OF CONFERENCE

I attempted to reach agreement with counsel for defendants on the language of the final judgment, but we were unable to reach agreement.

CERTIFICATE OF SERVICE

By my signature below, I certify that on this 6th day of July, 2016, I served the foregoing document by email, by agreement of counsel, to the attorney below at jim.todd@texasattorneygeneral.gov, with an additional copy by email to peggy.hamil@texasattorneygeneral.gov.

James C. Todd
Assistant Attorney General
Office of the Attorney General
General Litigation Division-019
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

M. L. Serafine M. L. Serafine

Mary Louise Serafine

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DR. MARY LOUISE SERAFINE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TIM F. BRANAMAN, Chairman,	§	Cause No.1:11-cv-01018-LY
Texas State Board of Examiners of	§	
Psychologists, in his official	§	
capacity; et al.	§	
	§	
Defendants.	§	

FINAL JUDGMENT

This matter comes before the Court on the judgment and opinion of the U.S. Court of Appeals for the Fifth Circuit in *Serafine v. Branaman*, 810 F.3d 354 (5th Cir. 2016). In accordance therewith, and for the reasons therein, it is hereby ORDERED AND ADJUDGED:

The Texas Psychologists' Licensing Act, to the extent it prohibits, without the State's license or permission, engaging in the practice of psychology as defined by Texas Occupations Code Section 501.003(c), is

hereby declared unconstitutional as a violation of the freedom of speech under the First Amendment to the United States Constitution.

Accordingly, the Texas State Board of Examiners of Psychologists, its agents, and any other state agency are hereby enjoined from enforcing against any person a prohibition or punishment of the unlicensed practice of psychology as defined by Tex. Occ. Code § 501.003(c).

IT IS FURTHER ORDERED AND ADJUDGED that the Texas Psychologists' Licensing Act, to the extent it prohibits, without the State's license or permission, engaging in the practice of psychology as defined by Texas Occupations Code Section 501.003(b)(1), that is, representing oneself "to the public by a title or description of services that includes the word 'psychological,' 'psychologist,' or 'psychology,'" is hereby declared unconstitutional AS APPLIED to Plaintiff Mary Louise Serafine, because it violates her freedom of speech under the First Amendment to the United States Constitution. The foregoing declaration EXCEPTS and EXCLUDES commercial speech, but Serafine retains any other rights to commercial speech she would otherwise have under other applicable law.

Accordingly, the Texas State Board of Examiners of Psychologists, its agents, and any other state agency are hereby enjoined from enforcing any prohibition or punishment of the unlicensed practice of psychology as defined by Tex. Occ. Code § 501.003(b)(1) against Serafine and all others similarly situated. The foregoing injunction EXCEPTS and EXCLUDES commercial speech, but does not impair any right of commercial speech that Serafine or any other person would have under other applicable law.

IT IS FURTHER ORDERED that any cease and desist order against Serafine issued by the Texas State Board of Examiners of Psychologists is hereby VACATED.

IT IS FURTHER ORDERED that Plaintiff Serafine has prevailed in this action and is entitled, pursuant to Federal Rule of Civil Procedure 54(d) and 42 U.S.C. § 1988(b), to recovery of costs and attorneys' fees in an amount to be determined.

Judgment is ENTERED in favor of Serafine.

SIGNED this _____ day of _____, 2016.

HON. LEE YEAKEL
UNITED STATES DISTRICT JUDGE